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IN THE

Supreme Court of the United States

October Term, 1940

No. 564

GUY T. HELVERING, *Commissioner of Internal Revenue, Petitioner*

vs.

OREGON MUTUAL LIFE INSURANCE COMPANY

On Commissioner of Internal Revenue's Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

1. **Consent to granting of Commissioner of Internal Revenue's Petition for Certiorari.**

2. **Request that, if Certiorari be granted, this case be assigned for oral argument on November 18, 1940, at the same time with No. 2 (*New World Life* case) and No. 264 (*Pan-American Life* case).**

WM. MARSHALL BULLITT,
Counsel for Oregon Mutual Life Insurance Co.

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GUY T. HELVERING, *Commissioner of Internal Revenue, Petitioner*

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OREGON MUTUAL LIFE INSURANCE COMPANY

On Petition for Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

CONSENT TO CERTIORARI

REQUEST FOR HEARING ON NOVEMBER 18, WITH NO. 2 [OCT. TERM, 1940]

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Oregon Mutual Life Insurance Company (1) **Consents** to the granting of the Commissioner's Petition for Writ of *Certiorari,* and (2) **Requests** that, if *certiorari* be granted, this case be advanced for oral argument, and be assigned for hearing on November 18, 1940, at the same time with (or immediately following) the oral arguments in No. 2 (*New World Life* v. *United States*) and No. 264 (*Helvering* v. *Pan-American Life*),—for the following reasons:

I. Certiorari should be granted. The Commissioner's petition for *certiorari* should be granted, because

(1) The Commissioner's Petition *presents the same ground* which caused this Court to grant *certiorari* in No. 2 (*New World Life* case) and in No. 264 (*Pan-American Life* case), i. e., a conflict between the decision of the Court of Claims in the *New World Life* [1] case, and the decisions of the Circuit Courts of Appeals for the First,[2] Fifth [3] and Ninth [4] Circuits.

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[1] *New World Life Ins. Co.* v. *U. S.* (Ct. Cl.), 26 F. Supp. 444.
[2] *Com'r* v. *Monarch Life,* 114 F. (2d) 314 [C. C. A. 1st].
[3] *Com'r* v. *Pan-American Life,* 111 F. (2d) 366 [C. C. A. 5th].
[4] *Com'r* v. *Oregon Mutual Life,* 112 F. (2d) 468 [C. C. A. 9th].

(2) The same questions involved in the *New World Life* and *Pan-American Life* cases, are also involved in the *Oregon Mutual Life* case.

(3) The *Oregon Mutual Life* case is the only one which contains anything like complete *data* and explanations regarding the nature of the Active and Disabled Life Reserves in controversy in all the cases.

(4) The *Oregon Mutual Life* case is the only one which involves the effect of both the Commissioner's old Regulations No. 77 [taxable year 1933] and the new Regulations No. 86 [taxable year 1934].

(5) Decision in either (or both) *New World Life* and *Pan-American Life* cases [while perhaps settling for *past* years, some, or all, of the questions involving Active and Disabled Life Reserves] *would not* settle those questions *for the future,* because Regulations 86 were not involved on the facts in those cases. Those questions, both, *for the future,* [i. e., for tax Returns filed *after* Regulations 86,] as well as *for the past,* are directly involved and raised on the facts in the *Oregon Mutual* case.

(6) There are a large number of undecided cases on the subject awaiting a final authoritative decision by this Court. Those cases are now pending in the Bureau of Internal Revenue, the Board of Tax Appeals, District Courts, and Court of Claims.

For those reasons, the Oregon Mutual consents to the granting of the Commissioner's petition for *certiorari;* and it urges that Commissioner's Petition be granted.

II. If certiorari be granted, then this case should be advanced, and assigned for oral argument on November 18, 1940 with No. 2 (New World Life) and No. 264 (Pan-American Life). If this Court should grant the Commissioner's petition for *certiorari,* then, and in such event, it would save this Court an unnecessary duplication of time and labor (devoted to the same questions), if the *New World Life, Pan-American Life,* and *Oregon Mutual Life* cases could all be heard together, or consecutively.

While the time left for preparing a Brief on behalf of Oregon Mutual Life is very limited, still, if necessary, the Brief can be prepared by November 18, 1940.

WM. MARSHALL BULLITT,
Counsel for Oregon Mutual Life Ins. Co.

November, 1940.

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SUPREME COURT OF THE UNITED STATES.

No. 564.—October Term, 1940.

Guy T. Helvering, Commissioner of Internal Revenue, Petitioner,
vs.
Oregon Mutual Life Insurance Company.

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

[December 9, 1940.]

Mr. Justice Black delivered the opinion of the Court.

In computing its net taxable income for 1933 and 1934, respondent took a deduction of 3¾% of the reserves it had set aside with respect to its combined policies of life, health, and accident insurance. Section 203(a)(2) of the 1932 and 1934 Revenue Acts permits a life insurance company to deduct from its gross income "An amount equal to [3¾%] of the mean of the reserve funds required by law . . . ."[1] That respondent was a life insurance company as defined by the Revenue Acts and that it was required by law to maintain reserves to protect both death and disability benefits were conceded. The Commissioner allowed a deduction for death reserves, but disallowed as to disability reserves, on the hypothesis that the words "reserve funds required by law" should be construed to apply only to reserves for death losses—thereby excluding disability reserves. The Board of Tax Appeals held the deductions allowable in both respects and reversed the Commissioner.[2] The Court of Appeals for the Ninth Circuit affirmed;[3] certiorari was granted because the Court of Claims had reached an opposite result on the same question.[4]

1 47 Stat. 224; 48 Stat. 732.

2 The opinion is not officially reported; the Board relied on its earlier decisions in Equitable Life Assurance Society *v.* Commissioner, 33 B. T. A. 708; Monarch Life Ins. Co. *v.* Commissioner, 38 B. T. A. 716; and Pan-American Life Ins. Co. *v.* Commissioner, 38 B. T. A. 1430.

3 112 F. (2d) 468. Other circuits reached a like result: Commissioner *v.* Pan-American Life Ins. Co., 111 F. (2d) 366 (C. C. A. 5); Commissioner *v.* Monarch Life Ins. Co., 114 F. (2d) 314 (C. C. A. 1).

4 New World Life Ins. Co. *v.* United States, 26 F. Supp. 444.

Legislative history discloses that a deduction similar to that allowed by section 203(a)(2) first appeared in the Revenue Act of 1921,[5] and has reappeared in every revenue measure since, including that of 1939.[6] Prior to 1921, insurance companies had not been allowed such a deduction, but had been subject to the same tax plan as corporations generally; the 1921 Act, however, wholly exempted insurance companies from the general scheme of corporate taxation and set up special systems applicable to them alone.[7] The new plan, as it related to life insurance companies, had as a major objective the elimination of premium receipts from the field of taxable income. It had long been pointed out to Congress that these receipts, except as to a very minor proportion of each premium, were not true income but were analogous to permanent capital investment.[8] In all the Revenue Acts from 1921 through 1939, the gross income of life insurance companies no longer included premium receipts, but was limited to income "from interest, dividends, and rents."[9] And, pursuant to the conceived analogy of reserves to capital investment, net income was to be determined by permitting, among other deductions from gross income, that same deduction here in dispute—a percentage of the "reserve funds required by law."

As entirely new and separate tax provisions relating only to life insurance companies were thus enacted, it became necessary specifically to define what constituted a "life insurance company" within the meaning of the Act. Therefore, it was declared in the 1921 Act and all its successors that "when used in this title the term 'life insurance company' means an insurance company engaged in the business of issuing life insurance and annuity contracts (including contracts of combined life, health, and accident insurance), the reserve funds of which held for the fulfillment of such contracts comprise more than 50 per centum of its total reserve funds."[10]

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[5] 42 Stat. 261, sec. 245(a)(2).

[6] 53 Stat. 72.

[7] The history of this legislation is set out in National Life Ins. Co. v. United States, 277 U. S. 508, 523-524.

[8] See, e. g., S. Rep. No. 617, part 1, page 9, 65th Cong., 3d Sess.

[9] E. g., sec. 244(a), Act of 1921, 42 Stat. 261; sec. 202(a), Act of 1939, 53 Stat. 71.

[10] E. g., sec. 242, Act of 1921, 42 Stat. 261; sec. 201, Act of 1939, 53 Stat. 71. The government contends that the determinative ratio under this section

Under the Congressional plan, there is granted a deduction based on those "reserve funds required by law." Section 203(a)(2) grants this deduction; section 201 defines life insurance companies. It seems clear that Congress intended to permit the deduction of reserves based on those policies that make a company a "life insurance company" under the Act, which, by definition, includes policies of "combined life, health, and accident insurance." The reserves here related to the disability provisions of such combined policies. The same underlying considerations that prompted the deduction for death reserves are applicable to the reserves for disability in these combined policies. And disability as well as death reserves fall literally within the language of the deduction provision. It is not disputed that administrative regulations promulgated under every Revenue Act from 1921 through 1932 recognized the right of life insurance companies to take deductions both for death and for disability reserves on policies such as those here involved.[11] Nor is it denied that the 1934 reenactment of section 203(a)(2) followed thirteen years of administrative regulation and practice under which substantially identical provisions had been so construed and applied that life insurance companies could and did obtain these deductions. During that entire period, the Treasury found no ambiguity in section 203(a)(2), and expressed no doubt as to a life insurance company's right to make such deductions. But on February 11, 1935, regulations were promulgated asserting disability reserves to be non-deductible under the 1934 Act;[12] and on December 18, 1935, a Treasury Decision declared that this regulation applied retroactively to the 1932 and earlier Acts.[13] Respondent now says that its former practice in permitting disability reserve deductions was erroneous,[14] and that the new regulation should be given full retroactive effect.

Petitioner

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is death reserves to total reserves; the insurance companies contend that the ratio is all reserves on the enumerated types of policies to total reserves. Since Oregon Mutual is admittedly a "life insurance company," regardless of which of these contentions is correct, this question is not before us.

11 Article 681 of Regulations 62, 65, 69, and Article 971 of Regulations 74 and 77.

12 Article 203(a)(2) of Regulation 86.

13 T. D. 4615, XIV-2 Cum. Bull. 310.

14 In support of the Commissioner's right to change the regulations under this supposed state of facts, the government cites Manhattan General Equipment Co. *v.* Commissioner, 297 U. S. 129, 134-135, and Murphy Oil Co. *v.* Burnett, 287 U. S. 299.

It is the government's contention that the change in the regulations was particularly appropriate because induced by judicial decision.[15] And it is true that this Court has held that reserves set aside by life insurance companies to protect payment of policy investment purchases cannot be used as the basis for deductions.[16] But those decisions rested upon the conclusion that the investment fund features had no relation to the insurance risks. Here, in the combined life and health and accident policies, the health and accident reserves are based upon contingencies of the commencement and continuance of disability. They have a direct and inseparable relationship to the very insurance contracts which bring respondent under a special tax scheme.[17] Nor is there a distinction, as ~~respondent~~ petitioner urges, between that part of the reserve set aside to protect policy holders not yet disabled and that part set aside to protect those already disabled. The liability to those who have incurred disability is not a fixed sum, but remains a contingency, still uncertain in duration and amount. Reserves held for such a contingent liability are true reserves in the insurance sense.

We find it unnecessary to discuss the extent to which such a regulation might, under different circumstances, be given retroactive effect by virtue of the statutory power of the Commissioner.[18] Nor do we find it necessary to discuss the argument that the policy behind the special treatment afforded life insurance companies does not warrant allowing this deduction. For it is our conclusion that by section 203(a)(2) of the 1932 and 1934 Acts, Congress has granted life insurance companies a deduction for disability reserves which only Congress can take away.[19]

Affirmed.

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[15] Cf. Morrissey *v.* Commissioner, 296 U. S. 344, 355. The judicial decisions relied on are those cited in the following footnote.

[16] Helvering *v.* Inter-Mountain Life Ins. Co., 294 U. S. 686; Helvering *v.* Illinois Life Ins. Co., 299 U. S. 88.

[17] Cf. Rhine *v.* New York Life Ins. Co., 273 N. Y. 1; Rubin *v.* Metropolitan Life Ins. Co., 278 N. Y. 625.

[18] For the Commissioner's power to promulgate retroactive regulations, ~~respondent~~ petitioner relies on section 506 of the Revenue Act of 1934, which amended section 1108(a) of the 1926 Act.

[19] Biddle *v.* Commissioner, 302 U. S. 573, 582; Koshland *v.* Helvering, 298 U. S. 441, 446-447.